KPFA News transcribed from tape 21 Nov 72

A new trial date has been set for Daniel Ellsberg and Anthony Russo in the Pentagon Papers case. Steve Futterman [Los Angeles] has the report.

Futterman: After a four month delay the trial of Daniel Ellsberg and Anthony Russo for espionage, conspiracy and theft has been tentatively scheduled to resume December 6th. The announcement, made by U.S. District Judge Matt Byrne, Jr., hinges on several defense motions to be filed, the major one being dismissal of the current jury. Judge Byrne said in court that there would be additional questioning of the jury, which was seated prior to the four-month delay. However, defense attorney Leonard Boudin, chief counsel for defendant Ellsberg, said he would oppose that.

Boudin [voice]: Our basic position will be that a voir dire cannot cure the extreme [?] sensitivity of the jurors, [word garbled] political events that occurred in the last four months, and the relationship with the Ellsberg case. As you see from the motions that we have either filed or are filing in a few minutes, these motions show that the same issues - Pentagon, secrecy, Watergate - run right through selective prosecution, run right through the campaign, secrecy was one of the McGovern planks - that is, an anti-secrecy thing - through the campaign and run right through this case. Therefore the jurors who've been out, we would think, [would be?] particularly sensitive to the issues in the case. And having been out four months, we will rely on the Solicitor General's statement to the Supreme Court that a jury on leash for four months is a jury which has by definition secured prejudices in the community and could not properly serve.

Futterman: Boudin also said that the defense would file a motion to dismiss the indictments on the basis of improper governmental conduct. The motion involves Bernard Barker, the former CIA agent, who led the raiding party into the Watergate. Boudin explained:

Boudin [voice]: We are going to make a motion to dismiss the case on the ground of improper governmental conduct, namely the attack by Barker on Ellsberg after the Haiphong incident (which you may have read about in Time Magazine and the New Yorker), that Barker brought up nine Cuban refugees to beat up Ellsberg and to call him a traitor, and that Barker was getting money from the Committee to Re-elect the President. And of course we know that Mitchell and Mardian and the White House people were all connected with that committee and were in control of funds. This seems to us to be an example of governmental misconduct. I don't want to say anything further than to say that we are going to address ourselves to that in a motion and call for whatever relief seems appropriate.

Futterman: Also today defense attorneys said that they will ask that Ellsberg and Russo be allowed to act in attorneys' capacities in examining certain expert witnesses. Judge Byrne set Thursday of next week for the next hearing date.

For Pacifica Radio in Los Angeles, this is Steve Futterman.